

# In the Court of Appeals of the State of Alaska

**Jeremy Fichtner,**  
Appellant,

v.

**State of Alaska,**  
Appellee.

Court of Appeals No. **A-13987**

## **Order**

Date of Order: **6/01/2022**

Trial Court Case No. **3SW-20-00276CR**

Before: Wollenberg, Harbison and Terrell, Judges

Jeremy Paul Fichtner appeals from the trial court's March 30, 2022 decision denying his request to approve his mother, Mary Fichtner, as his third-party custodian. For the reasons explained in this order, we affirm the trial court's decision.

This is the second time Fichtner has appealed the trial court's bail order in this case. We described the facts of this case in our previous order, and for convenience we recite them again here.<sup>1</sup>

On December 3, 2020, Fichtner was charged with one count each of second-degree, third-degree, and fourth-degree misconduct involving a controlled substance, and five counts of second-degree misconduct involving weapons.<sup>2</sup> He was subsequently released to the third-party custody of his sister, Cozilynn Fichtner. The court required him to remain with his third-party custodian at all times, post a \$10,000

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<sup>1</sup> See *Fichtner v. State*, 2022 WL 697553 (Alaska App. Mar. 8, 2022) (unpublished bail order).

<sup>2</sup> AS 11.71.021(a)(1), AS 11.71.030(a)(9), AS 11.71.040(a)(1), and AS 11.61.195(a)(1), respectively.

cash performance bond, and comply with Pretrial Enforcement Division (PED) supervision including electronic monitoring and drug monitoring.

The court later amended Fichtner's conditions of release by adding an additional third-party custodian, his father, John Fichtner. The court also reduced the performance bond amount to \$5,000 cash and ordered Fichtner not to possess controlled substances except with a valid prescription. There was no change to the PED electronic and drug monitoring requirements.

Approximately five months later, on June 1, 2021, Fichtner was charged, in the same case, with violating the conditions of his release.<sup>3</sup> The complaint adding this new charge alleged that Fichtner reported to the PED office and submitted to a urine analysis which was positive for opiates. At Fichtner's arraignment on this charge, the court required Fichtner to post an additional \$500 performance bond and to be supervised by a new third-party custodian.

On November 15, 2021, the court conducted a bail review hearing to determine whether to approve Fichtner's mother, Mary Fichtner, as his new third-party custodian. But at the conclusion of the hearing, the court expressed concern about approving Fichtner's mother as a third-party custodian. The court explained that its concern was based on testimony Fichtner provided at a recent evidentiary hearing on his motion to suppress evidence. At this evidentiary hearing, Fichtner had testified about his upbringing and, in particular, about his family's views about the police. Based on this testimony, the trial court denied Fichtner's request to approve his mother as a third-party custodian.

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<sup>3</sup> AS 11.56.757(b)(1).

In his first appeal of the court’s order declining to approve Mary Fichtner as a third-party custodian, Fichtner pointed out that when the trial court ruled on his motion to suppress, it specifically held that Fichtner’s testimony about his upbringing was not credible. Fichtner accordingly argued that the trial court should not have relied on this testimony as the basis for denying his request to approve his mother as a third-party custodian. This Court concluded that, because the trial court’s treatment of Fichtner’s testimony was inconsistent, it was necessary to remand the matter for clarification and for reconsideration of Fichtner’s request to approve his mother as a third-party custodian.

On remand, the trial court again denied Fichtner’s request to approve his mother as a third-party custodian. The court clarified that it believed Fichtner’s testimony about how he was raised, abrogating its previous findings that Fichtner was not credible. Relying on this finding, the court found that it did not have “confidence” in Mary Fichtner as a third-party custodian. The court held that, given Fichtner’s “parents’ and his brothers’ and sisters’ philosophy,” as well as “the level of charges here, with the large quantity of substances, with the multiple handguns, with Mr. Fichtner already having alleged to have violated bail conditions once while in the custody of his family,” it would not approve Mary Fichtner as a third-party custodian.

We have explained that the critical question with respect to the approval of a third-party custodian is whether the proposed third-party custodian is willing and able to fulfill the supervisory duties that will be required of them.<sup>4</sup> In this case, the trial court

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<sup>4</sup> *Francis-Fields v. State*, 2020 WL 9173374, at \*1 (Alaska App. Dec. 17, 2020) (unpublished bail order).

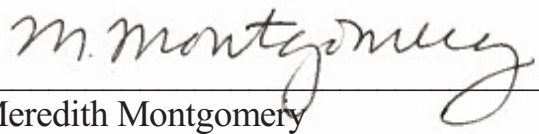
implicitly found that Mary Fichtner would not fulfill the supervisory duties required of her. In making this finding, the trial court relied not only on Fichtner's testimony about how he was raised, but also on the circumstances of the offense and Fichtner's previous violation of his bail conditions that occurred while Fichtner was supervised by his father and sister as third-party custodians. Under these circumstances, we cannot find that the trial court's rejection of Mary Fichtner as a third-party custodian was an abuse of the court's discretion.

*Conclusion*

We AFFIRM the trial court's order denying Fichtner's request to approve his mother, Mary Fichtner, as a third-party custodian.

Entered at the direction of the Court.

Clerk of the Appellate Courts

  
Meredith Montgomery

cc: Judge Gist  
Trial Court Clerk - Seward

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